

Questionnaire Nigeria

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I. Introduction

Presumption: It is supposed that a Constitutional Court is the highest court of a country, either on top of the court hierarchy or an extra institution standing aside. If in a respective country a constitutional court may be a lower court form which appeals are taken to the higher Court (e.g. Supreme Court), please indicate that clearly and consider that while responding to the questions below.

II. The relevance of different legal systems as a source of inspiration for judicial systems in West Africa

1. Common Law (to be answered by researchers for Ghana, Liberia, Nigeria, Sierra Leone, Gambia)

General Structure	
What are relevant features of the Common Law system with regard to constitutional review and the institutional setting allowing for constitutional review?	<p>The institutional setting allowing for constitutional or judicial review is first and foremost the separation of powers within the government structure. There must be an executive, legislature and a judiciary and checks and balances mechanisms must be in place. Additionally, the judiciary must be empowered to assess actions of the legislature and executive.</p> <p>The British Common Law (CL) system is based on:</p> <ul style="list-style-type: none"> - Common law, i.e. judgements as rules - Principle of equity - Statutes/Acts of Parliament <p>Of relevance within the British Common Law system is the doctrine of Parliamentary Supremacy, as opposed to supremacy of the Constitution in e.g. the United States (US). The Parliamentary model of governance in the United Kingdom (UK) has evolved through an unwritten constitutional tradition. <u>Constitutional review</u> (in the sense of a <u>review of the constitution</u>) is therefore not possible per se. In a broader sense, the constitution of the UK can however be regarded as a set of principles and laws governing the UK¹. Along these lines, <u>judicial review</u> of judgements, subsidiary law or the exercise of power by a government authority does exist.² Yet, underlying the doctrine of Parliamentary Supremacy³, Acts of Parliament cannot be</p>

¹It hereby depends on how "constitution" is defined. Following the definition of Thomas Paine (*"a Constitution is a Thing antecedent to Government, and a Government is only the Creature of a Constitution. The Constitution of a Country is not the act of its Government, but of the People constituting a Government"*) the British Constitution might well be defined as a set of rules and practices, inherent to Common Law. Lord Justice Laws in the *Thoburn* case in 2002 states that there may be a special class of "constitutional statutes" such as the Bill of Rights, Magna Carta, the Human Rights Act 1998 etc.

²The High Court may exercise judicial review as outlined in the Civil Procedure Rules, Part 54.

³There is a growing shift towards the attitude that the British "constitution" cannot be determined by Parliament only (as indicated in cases such as *Anisminicor Belmarsh*). Lord Mance suggests in *Ahmed* that in the absence of any judicial review, some acts of government would not be sustained by the courts due to their fundamental inconsistency with basic principles of British Law. However, up to this date, courts do not have the authority to exercise judicial review over parliamentary legislation. Even though a move to giving more powers to the judiciary is recognisable (not only through the establishment of the Supreme Court of the UK), seen from a traditionalist perspective, as Edlin (2013) argues, Britain will restrain from developing an unconstrained judicial activism such as in the US.

	<p>reviewed,⁴ which can be said to create an imbalance between the three branches of government.⁵</p> <p>The US Common Law system is based on a presidential model of government provided for in a written constitution. The mere fact that a written constitution exists, allows the possibility for its review (i.e. amendment/alteration). In the case of the US Constitution, the requirements for a modification are set forth in Article V of the US Constitution.⁶</p> <p>Furthermore, the US system is based on the principle of constitutional supremacy, which assures that any legislative or executive action must be consistent with the constitution and can therefore be made subject of judicial review. The US constitution does not explicitly establish the power of judicial review (of constitutional matters or other matters). However, as the US is a country based on common law (in the sense of judges as law makers), the case of Marbury vMadison established the precedent for judicial review. It is stated that, <i>“the theory of every [such] government must be, that an act of the legislature, repugnant to the constitution, is void. [...] It is emphatically the province and duty of the judicial department to say what the law is”</i></p> <p>Options of judicial review (of constitutional matters) in common law countries:</p> <ol style="list-style-type: none"> 1. Preliminary review of legislation within the legislative process. 2. Abstract/incidental review of primary and delegated/administrative legislation or acts/omissions of public authorities <p><u>Limits to judicial review in Common Law Countries:</u></p> <p>Jurisdiction stripping: According to Art. III § 2 of the US Constitution, the appellate jurisdiction of the Supreme Court is regulated by the Congress. The Congress may not strip the U.S. Supreme Court of cases that fall under original jurisdiction, the Congress can only limit the appellate jurisdiction of the court.</p> <p>Ouster Clauses (partial or total): Clause included in a piece of legislation which excludes the possibility of judicial review. Ouster clauses can nevertheless be pronounced as unconstitutional (or incompatible with fundamental common law principles) and thus declared null.</p>
To what extent and in what ways is the legal	

⁴This also results in tensions between the doctrine of Parliamentary Supremacy and the incorporation of European Law.

⁵ There cannot be said to be a distinctive separation of powers. However, in line with the changes regarding the doctrine of Parliamentary Supremacy (e.g. establishment of Supreme Court, intrusion of European Union), a clearer division of the three branches of government is evolving.

⁶*“The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress;[...]”*

<p>system of the respective country (still) influenced by the Common Law system insofar (related to constitutional review / institutional setting allowing for constitutional review?)</p>	<p>The Nigerian system is similar to the US governmental structure (presidential system), with a written constitution. At the same time, it has “inherited” or as it used to be said “received” the principles of the British Common Law. These being:</p> <ul style="list-style-type: none"> - The doctrine of precedents / Case law (English precedents used to be binding at the time of colonialism. Today, English precedents are merely persuasive) - Doctrines of equity - Statutes of General Application in force in England on the 1st January 1900 - English statutes and subsidiary legislation on specific matters made before October 1st 1960 (independence day) extending to Nigeria <p>The sources of Nigerian law additionally include:</p> <ul style="list-style-type: none"> - Local legislation - Nigerian case law - Customary law and Islamic law <p>Regarding the structure and judicial proceedings, Nigeria “inherited” the adversarial legal system and the hierarchy of courts, with one court supervising all lower courts (as it used to be the case with the King’s Bench).</p> <p>Ever since 1979, Nigeria has operated the presidential system of government similar to the US (see historical developments in point III below). Like the US constitution, the Nigerian Constitution⁷ (in effect since 1999) does not explicitly establish the power of judicial review. It however, as the US Constitution, provides for a clear separation of powers and constitutional supremacy.</p> <p>Relevant features of Common Law as listed in the following point are all inherent to the Nigerian System.</p>
<p>What are relevant features of the Common law system with regard to the judiciary?</p>	<ul style="list-style-type: none"> - Rule of Law - Independence of the t Judiciary - Hierarchy of Courts - Common law (i.e. case law), judges/judgements able to make law (as opposed to civil law systems, where judges merely interpret law) <ul style="list-style-type: none"> - Lower Courts are bound to follow decisions of higher courts because of the (underlying principle of stare decisis. In the process, the difference between the <i>ratio decidendi</i> and <i>obiter dictum</i> in a judgement is underscored. - Adversarial system of court proceedings <p>⇒ These principle are all inherent/applied in Nigeria as well</p>

3. Religious / Customary / Mixed Legal Systems

Religious / Customary elements in the judicial system

⁷ Constitution of the Federal Republic of Nigeria of 1999, henceforth referred to as “the Constitution” or “C.F.R.N.”

<p>Does the judicial system in the respective country have religious courts / customary courts?</p>	<p>Yes. Nigeria has both Customary and Sharia Courts. Both are separately discussed below.</p> <p>SHARIA: 12 states of Nigeria have introduced Sharia Legislation: Zamfara, Kano, Sokoto, Katsina, Bauchi, Borno, Jigawa, Kebbi, Yobe, Kaduna, Niger and Gombe State.</p> <p>Sharia Courts are made up of lower and upper Sharia Courts, of which there are several in each state and which hear cases at first instance.⁸ Upper Sharia Courts have appellate jurisdiction and hear appeals from the lower Sharia Courts. There also exists in each state one Sharia Court of Appeal (as provided for in the Constitution, Section 275 (1), see below).</p> <p>The first state to establish Sharia Courts was f Zamfara state with its <i>Sharia Courts (Administration of Justice and Certain Consequential Changes) Law, No. 5 of 1999</i>, assented to by the Governor on 8th October, 1999.⁹</p> <p>Sharia Law applies only to Muslims. Non-Muslims cannot be coerced to be tried by Sharia Courts. However, they may choose to take cases through Sharia Courts if they wish.</p> <p>The Zamfara Penal Code states: <i>“Every person who professes the Islamic faith and/or every other person who voluntarily consents to the exercise of the jurisdiction of any of Shari’ah Courts [...]shall be liable for punishment...”</i>(Zamfara Penal Code Law 2000, Sec B)</p> <p>Beside the Sharia legislation and Courts, executive Sharia structures were developed, such as Councils of Ulama¹⁰, or Sharia implementation committees and groups known as <i>hisbah</i>, whose main role is to report any breaches of Sharia law amongst the community members.¹¹</p> <p>The application of Sharia law varies from state to state, with Zamfara being the strictest (and also the first to introduce Sharia legislation). On the other hand, as is the case in Kaduna¹² for example, the Sharia Courts barely deal with any cases.</p> <p>CUSTOMARY: Customary Courts have been established in the following states¹³: Plateau, Edo, Delta, Imo, Federal Capital Territory, Abia, Anambra, Benue, Ebonyi, Rivers, Imo, Ondo, Kogi, Nassarawa, Borno?, Enugu, Kaduna, Kwara? and Taraba and others.¹⁴</p>
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⁸Peters 2001

⁹Cited in Sada 2007

¹⁰Sada 2007

¹¹HRW 2004

¹²Kaduna State is made up of roughly fifty per cent Muslims and fifty per cent Christians. The introduction of Sharia law into the state legislation in 2000 was followed by massive riots and killings. Similar uprisings were witnessed in Kano in 2002.

¹³List based on own online research and Olubor 2007

¹⁴The establishment of a Customary Court of Appeal in Ekiti State is currently in motion.

	<p>Customary Courts (also known as Area Courts) are successors of the so called “native courts”.¹⁵They may be established by each state.¹⁶Customary courts have jurisdiction over both civil and criminal matters while applying customary law. Each area and customary court has its rules governing its practice and procedure.¹⁷</p> <p>Even though Customary Law is accepted to be flexible and non-static¹⁸, its validity must be proven¹⁹. According to the Evidence Act of 2011 “a custom may be adopted as part of the law governing a particular set of admissible circumstances if it can be judicially noticed or can be proved to exist by evidence” (Sec 16. (1)).</p> <p>Custom can be judicially noticed either if it has been applied before by a court of record, or if recognised in the specific community by the opinion of others. A limit is set to the “validity” of customary law with the provision that any custom contrary to public policy, or not in accordance with natural justice, equity and good conscience, cannot be enforced as law (Sec 16 (3)).</p> <p>Without wanting to go into an analysis of judicial pluralism, it can simply be noted, that plaintiffs are free to choose which of the courts (Magistrate (Common Law) Courts, Sharia Courts or Customary Courts) they want to turn to.</p>
Do (lower) courts apply / accept customary law or religious law?	Yes. Depending on the state, lower Customary and Sharia Courts apply the respective law, according to state law (see above).
Does customary law or religious law have a formal status in the country?	Yes. The status of both Customary and Sharia Law is formal and respective courts are established by the Constitution (see below).
Are customary courts established under the constitution / a statute? Are they part of the regular court system? Are appeals from them taken to the regular court system?	<p>Yes.Section 260 (1) of the Constitution establishes the Sharia Court of Appeal of the Federal Capital Territory of Abuja. Section 275 (1) of the Constitution provides for any State that requires it, a Sharia Court of Appeal of a State.</p> <p>Section 265 (1) of the Constitution establishes the Customary Court of Appeal of the Federal Capital Territory of Abuja. Section 280 (1) of the Constitution provides for any State that requires it, a Customary Court of Appeal of a State.</p> <p>On a lower level, the Sharia and Customary Courts function parallel to the Common Law Courts. At the superior court level, both Customary and Sharia cases are integrated into the Common Law Courts. Appeals to the Court of Appeal of Nigeria can lie from the Customary and Sharia Courts of Appeal (C.F.R.N.</p>

¹⁵ For a good short note on the historical development of customary court in Nigeria see Makeri 2007

¹⁶ In Kaduna State for example, Customary Courts and the Customary Court of Appeal were established through law No. 9 and 14 2001.

¹⁷ See for example: Edo State of Nigeria Gazette Customary Courts Rules, 2011

¹⁸ As was stipulated in *Kimdey and Others v Military Governor of Gongola State and Others*, cited in Olong 2007, p.46

¹⁹ As pointed out for example in *Lewis v Bankole (1908) 1 NLR 81*

	<p><i>Sec 244 (1) and 245 (1)</i>). The Supreme Court of Nigeria has in turn jurisdiction over appeals from the Court of Appeal (<i>C.F.R.N. Sec 233 (1)</i>).</p>
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III. Historical Background of Constitutional Justice in West Africa

Development of Judicial Systems	
<p>Has the judicial system changed in comparison to the one included in the independence constitution? If so in what respects?</p> <p>Is there an autonomous constitutional review in the country (only focusing on the constitutional question of a case)? If so, since when?</p>	<p>Yes it has.</p> <p><u>HISTORICAL DEVELOPMENT OF THE JUDICIARY:</u></p> <p><u>Court system</u>²⁰:</p> <p>Before independence, a Supreme Court was established in 1900 (in Southern Nigeria), Sharia Law was official and operative in Northern Nigeria, and “native courts” were officially recognised and operated in southern Nigeria. Before 1954, Nigeria consisted of 3 Regions; each Region had its own High Court. Federalism was introduced in 1954.</p> <p>Nigeria gained independence in 1960. In 1967, Nigeria was further broken into 12 States each with its own state judiciary. The <i>Court of Appeal Edict, No 15 of 1969</i> of the Western Region established a Regional Court of Appeal for the Western State. The Federal Revenue Court (today the Federal High Court) was established by the <i>Federal Revenue Court Decree No 13 of 1975</i>. 19 states were created in 1976 via the <i>Constitution (Amendment No 2) Decree No 42 of 1976</i>. This was followed by a 36 state structure in</p> <p>Presently under the 1999 Constitution, the Courts recognized as constituting the judiciary are the Supreme Court, the Court of Appeal, the Federal High Court, the High Court of the Federal Capital Territory Abuja, the Customary Court of Appeal - Abuja, the States High Courts, the Sharia Court of Appeal of the States and the Customary Court of Appeal of the States.</p> <p><u>Judicial Council:</u></p> <p>The National Judicial Council (NJC), is one of the executive bodies created by virtue of section 153 of the Constitution. The Council was created and vested with enormous powers and functions, which the erstwhile Advisory Judicial Committee (AJC) which it replaced, did not have.²¹ Apart from the power to recommend persons for appointment to named judicial offices, it exercises disciplinary control over such officers. In addition, it is empowered to collect control and disburse all monies, capital and recurrent, for the judiciary.</p> <p><u>Constitutions:</u></p> <ul style="list-style-type: none"> - Before independence, Nigeria had four constitutions after the amalgamation of the north and south in 1914 viz 1922, 1946, 1951 and 1954. - Nigeria’s independence constitution (1960) still had the Queen as titular head of state. - The Constitution of the first Republic (1963) was based

²⁰Following section is based on San 2001

²¹Azinge and Rapu 2012

on the Westminster model, with a Parliament and a Prime Minister.

- The **Constitution of the second Republic (1979)**, established a presidential democracy similar to the American governmental system.
- The 1995 draft Constitution never fully came into force, **the 1999 Constitution** (still valid today) came into force after years of military rule, and restored civil rule.

The last three Constitutions of Nigeria have provisions making the Constitution the supreme law of the land.²² Any law contrary to the Nigerian Constitution was declared null and void in all Nigerian Constitutions. However, practically, it cannot be said that the rule of law always reigned in Nigeria.

Effects of Military Rule in Nigeria:

The Republican Constitution of 1963 was the supreme law of the land prior to January 15th, 1966, when the first *coup d'état* was executed. In the period that followed until 1999, except for the brief spell of civil rule from 1979 to 1983, the country was under military rule. A consequence of this was that the legal system and laws of the land often suffered serious infraction.²³ The judicial sector in Nigeria was also a victim of the succession of military governments.

In 1966, some parts of the 1963 Republican Constitution were either suspended or modified by the Constitution (*Suspension and Modification*) Decree No. 1 1966. The Decree became the supreme law of the land and overrode every inconsistent legislation; including the constitution.

Similarly the Federal Military Government (*Supremacy and Enforcement of Powers*) Decree No. 28 of 1970 provided that **“any decision [...] by any court of law [...] which has purported to declare or shall hereafter, purport to declare the invalidity of any Decree or of any Edict (in so far as the provisions of the Edit are not inconsistent with the provisions of the Decree) or the incompetence of any of the governments in the Federation to make the same is or shall be null and void at the date of making thereof”**.²⁴

In like manner, *The Constitution Suspension and Modification*) Decree No. 1 of 1984, ousted the jurisdiction of the Courts.

AUTONOMOUS CONSTITUTIONAL REVIEW BODY

No. Every court established by virtue of section 6 of the 1999 Nigerian Constitution is capable of answering any constitutional question which may arise in litigation before it.²⁵ See point IV 2 below.

²² Provided in Section 1 of the Republican Constitution of 1963 and Section 1(1) & (3) of the Constitution of the Federal Republic of Nigeria 1979.

⁵ See B.O. Nwabueze ,

²⁴ Decree not available; citation relies on Edeko 2011, p.150

²⁵ Rapu 2012

(Political Control)

IV. Different Models of Constitutional Justice

1. Different Constitutional Institutions

What kind of judicial institutions are available in the respective country	
Which institution is considered “the highest court” in the country?	<p>The Supreme Court, established by Section 230 (1) of the Constitution, is the highest court in the country. Its decisions are final and bind every other court (<i>C.F.R.N. Sec 287. (1)</i>). It has both original and appellate jurisdiction. It hears appeals from the Court of Appeal and determines certain matters as a court of first instance. According to Section 232 (1) and (2) these include any dispute between the Federation and a state or between states in so far as that dispute involves a question on which the existence or extent of a legal right depends.</p> <p>Its appellate jurisdiction covers, amongst others, decisions in any civil or criminal proceedings on questions as to the interpretation or application of the constitution (<i>C.F.R.N. Sec. 233 (2) (b)</i>)</p>
Does the “highest court” in the country also stand at the top of the regular court system? Or is it a separate institution?	Yes it stands at the top of the regular court system.
Are there various highest courts in the country dependent on the issue to be addressed (e.g. highest court of administration, highest tax court)	<p>There is only one Supreme Court which can go with the title of highest court on all matters.</p> <p>However, some matters can be dealt with by the Court of Appeal as for instance disputes on the result of the election of members of the National and State Assemblies through its appellate jurisdiction. For that purpose the “highest court” will be the Court of Appeal and its decisions are final. In the case of Presidential or Governorship elections, the Court of Appeal has original jurisdiction (<i>C.F.R.N. Sec 239 (1)</i>). For more info see point below on elections.</p> <p>There is a National Industrial Court (NIC), established by the <i>C.F.R.N (Third Alteration) Act, 2010</i> which has jurisdiction in civil causes and matters relating to any labour, employment, trade unions, industrial relations and matters arising from workplace, the conditions of service, including health, safety, welfare of labour, employee, worker, etc.. (See Alteration Act Sec 254 C (I)). However, the court cannot be regarded as a “highest” court as the Court of Appeal hears appeals from the NIC, and the Supreme Court hears appeals from the Court of Appeal.</p> <p>The Federal High Court and the High Courts of States should also be mentioned here as they can hear constitutional matters. Appeals from the State High Courts and the Federal High Court go to the Court of Appeal and from there to the Supreme Court.</p>
Which courts can the question the constitutionality of acts or of laws?	<p>The Supreme Court, The Court of Appeal, the Federal High Court²⁶ and the High Courts of the States²⁷.</p> <p>Section 42(1) of the Constitution provides that any person who</p>

²⁶See Federal High Court (Civil procedure) Rules 2009 on judicial review in Order 34

²⁷See for example High Court of Lagos State (Civil Procedure) Rules 2011

	<p>alleges that any of the provisions of Chapter IV (fundamental rights) has been is being or is likely to be contravened in any State in relation to him may apply to a High Court in that State.</p> <p>According to Section 251 (1) (p) (q) and (r), the Federal High Court of Nigeria has original jurisdiction in matters of</p> <ul style="list-style-type: none"> - the operation and interpretation of the Constitution in so far as it affects the Federal Government or any of its agencies; - any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies;
Does the country have a judicial commission / judicial council, etc.	Yes. It has The National Judicial Council and a Judicial Service Commission both established by the Constitution. (See Point V 3 below)

2. Systems of Control

If a lower court assumes that a regulation relevant to the case before it violates the Constitution, what can it do?	
Nothing, no power to question the constitutionality of the law/regulation.	<p>The 1999 Constitution of Nigeria provides that any other law inconsistent with its provisions shall to the extent of its inconsistency be void (C.F.R.N. Sec 3 (1)). As judges are the custodians of the constitution, it is within their power to determine the constitutionality of legislative enactments.²⁸</p> <p>High Courts may question the constitutionality of a law on the lowest level. If a Magistrate Court finds that a legislative enactment or administrative action is unconstitutional, it may refer it to a higher court (see below).</p>
If the court has serious doubts about the constitutionality of the law/regulation related to a specific case, it might pause the proceedings and request a statement of constitutionality from another institution (constitutional court, constitutional council, etc.), which may declare the regulation/law for unconstitutional.	<p><u>AT THE MAGISTRATE COURT LEVEL</u></p> <p>Magistrate Courts do not have jurisdiction to declare laws or actions as unconstitutional²⁹, they may refer the case to a High Court or the Federal High Court.</p> <p>Section 295 (1) of the Constitution provides that “<i>where any question as to the interpretation or application of this Constitution arises in any proceedings in any court of law in any part of Nigeria (other than in the Supreme Court, the Court of Appeal, the Federal High Court or a High Court) and the court is of the opinion that the question involves a substantial question of law, the court may, and shall if any of the parties to the proceedings so requests, refer the question to the Federal High Court or a High Court having jurisdiction in that part of Nigeria and the Federal High Court or the High Court shall</i></p> <p><i>(a) if it is of opinion that the question involves a substantial question of law, refer the question to the Court of Appeal;</i></p> <p>o r</p> <p><i>(b) if it is of opinion that the question does not involve a substantial question of law, remit the question to the court that made the reference to be disposed of in accordance with such</i></p>

²⁸Edeko 2011 p. 138 or Arewa 2012, p. 240

²⁹See for example Lagos Magistrates’ Courts (Civil Procedure) Rules

	<p><i>directions as the Federal High Court or the High Court may think fit to give.”</i></p> <p><u>AT THE HIGH COURT LEVEL</u></p> <p>If the High Court of a State or the Federal High Court grants leave to apply for judicial review and if the relief sought is an order of prohibition or certiorari, the grant operates as a stay of proceedings to which the application relates until the determination of the application. The judge can also grant interim relief or impose such terms as to costs or giving security.³⁰</p> <p>The Court may then give orders of mandamus, prohibition, certiorari or an injunction restraining a person from acting in any office in which he is not entitled to act (<i>Federal High Court Rules, Order 34, 1 (1)</i>).</p> <p>A question on constitutional issues in a High Court may also be referred to a higher court like the Court of Appeal which in turn may refer the case to the Supreme Court.</p> <p>Section 295 (2) of the Constitution provides that “<i>where any question as to the interpretation or application of this constitution arises in any proceedings in the Federal High Court or a High Court, and the court is of opinion that the question involves a substantial question of law, the court may, and shall if any party to the proceedings so requests, refer the question to the Court of Appeal; and where any question is referred in pursuance of this subsection, the court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision.</i>”</p> <p>If the case is referred to the Supreme Court by the Court of Appeal by virtue of Section 295 (2), the Supreme Court gives its decision upon the question and gives such directions to the Court of Appeal as it deems appropriate. (<i>C.F.R.N. Sec 295 (3)</i>)</p>
The lower court may declare the regulation/law to be inapplicable in the specific context.	Any Court lower than the High Courts of States may NOT declare a regulation/law inapplicable because of its unconstitutional nature; only High Courts, Court of Appeal and Supreme Court may.
The lower court declares the regulation/law to be unconstitutional.	-
Any other action	-

- a. Diffuse System of Constitutional Review: The Supreme Court
- b. Concentrated System of Review: The Constitutional Court
- c. Hybrid Systems of Constitutional Review

V. Some Relevant Aspects of Judicial Independence

1. Independence of the Judiciary vs. Independence from the Judiciary – the Judiciary as Legislature

³⁰See Federal High Court (Civil procedure) Rules 2009, ORDER 34, 3 (6), and for example High Court of Lagos State (Civil Procedure) Rules 2011, ORDER 40, 3 (6), respectively.

2. The Administration of the Highest Court and its Budget

Administration of the Judiciary	
Which body / institution is administering the "highest court"?	<p>ADMINISTRATION OF THE JUDICIARY:</p> <p>The National Judicial Council (NJC) is established under Section 153 (1) (i) of the Constitution and is empowered to advise the president on Judges' appointment matters and to deal "with all other matters relating to broad issues of policy and administration" (C.F.R.N. Third Schedule, Sec. 20). The Council includes a Federal Judicial Budget Monitoring and Evaluation Unit, composed of four members.³¹</p> <p>ADMINISTRATION OF THE SUPREME COURT:</p> <p>Registry:</p> <p>The <i>Supreme Court Act</i> provides for the appointment of a Chief Registrar, and deputy Registrars in Section 6 (1). At the time of writing, the Chief Registrar of the Supreme Court is Sunday Olorundahunsi. Besides him, there are four Deputy Registrars.</p> <p>Administration Department:</p> <p>Supervised by the Registry, there is an Administration Department which, according to the website, is responsible for: Taking charge of establishment matters, the preparation of manpower budget, taking charge of personnel and policy records, processing of benefits etc.³²</p>
Is the Ministry of Justice involved in the administration of the "highest court"? If so, to what extent? Or is it administered by the judiciary?	No. The Ministry of justice is not involved in the administration of the judiciary.
Is there a body within the Judiciary / highest court that is responsible for administering the resources? To whom is this body accountable? Is there any kind of external oversight?	<p>The Supreme Court has a Finance and Accounting Department which has as key functions³³:</p> <ul style="list-style-type: none"> - Ensuring compliance with financial regulations and accounting code by all staff - Ensuring adequate supervision of the disbursement of funds and ensuring proper monitoring of revenue collection. - Advising the accounting officers on all financial matters as well as more technical provision of these regulations and other treasury/finance circulars. - Monitoring proper accounting records such as books of accounts, main and subsidiary ledgers. - Ensuring prompt rendition of all returns e.g Consolidated account (monthly transcript), Bank Reconciliation statements, revenue & expenditure returns. - Compiling and defending of the budget proposals and ensuring effective budgeting control by matching/ comparing budgeted figures with the actual expenditure or revenue as the case may be. - Ensuring that all staff are exposed to regular training programmes as specified in the budget proposal. - Liaising with the office of the accountant-general from

³¹Information obtained from the NJC's website; no information available on Units' competences.

³²As stated on the Supreme Court's website: <http://supremecourt.gov.ng/department/administration>

³³As stated on the Supreme Court's website: <http://supremecourt.gov.ng/department/finance-and-account>

	<p>time to time when in doubt in the interpretation of the provisions of these regulations and other treasury circulars.</p> <ul style="list-style-type: none"> - Ensuring the existence of an effective audit query unit/ section to promptly deal with all queries from the internal audit unit inspectorate department, office of the accountant- general and the public accounts committee. <p>Maybe the Federal Judicial Budget Monitoring and Evaluation Unit, plays a role as well. Unfortunately, I was not able to obtain any more information in this regard.</p>
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What kind of impact does the judiciary / the constitutional court have in the process of drafting / approving its budget	
What kind of involvement does the “highest court” have in devising its budget (who originally submits its budget)?	The National Judicial Council prepares and defends the budget of the judiciary before the National Assembly. As the NJC includes members of the Supreme Court (also the Chief Justice), it is very much involved in devising its budget.
Who might have the right to alter the budget (of the highest court) within the approval procedure?	The National Assembly may alter the budget in the process of passing an Appropriation Act.
In how far do court statistics (case workloads, etc.) play a role in the determination of the budget	No information available.
Is the budget (of the highest court) an integral part of the overall budget or is it separated?	<p>Constitutionally it is deducted from the Consolidated Revenue Fund. Section 81 (3) of the Constitution states: <i>“Any amount standing to the credit of the judiciary in the Consolidated Revenue Fund of the Federation shall be paid directly to the National Judicial Council for disbursement to the heads of the courts established for the Federation and the State under section 6 of this Constitution.”</i></p> <p>OR/AND through an Appropriation Act passed as part of the annual budget annually which is prepared by the President and laid before the House of Assembly.</p>

3. Judicial Commission / Judicial Council

Judicial Commission / Judicial Council	
Is there any institution like a Judicial Commission / Judicial Council (see also IV.1)?	<p>The National Judicial Council is one of the Federal Executive Bodies created by virtue of Section 153 of the Constitution.</p> <p>There is also a Federal Judicial Service Commission, another Federal Executive Body created by Section 153 of the Constitution.</p>
If so, what are the tasks of the Judicial Commission / Judicial Council? (might be a considerable discrepancy between common law approach and civil law approach)	By Virtue of the Third Schedule, Part I, Section 21 of the Constitution, the functions of the National Judicial Council are to:

	<ul style="list-style-type: none"> - Advise the President or Governor on any matter referred to them by such parties, pertaining to the judiciary; In particular the NJC recommends to the President, the appointment or removal of the following officers (in principle all officers of Courts established under the Constitution.): <ul style="list-style-type: none"> - Chief Justice, Justices of the Supreme Court, President and Justices of the Court of Appeal, and Judges of the Federal High Court, Judges of the High Court of the Federal Capital Territory Abuja, Kadis of the Sharia Court of Appeal and President of the Customary Court of Appeal - Appoint, dismiss and exercise disciplinary control over members and staff of the Council, and disburse all moneys of the Council - Deal with all other matters relating to broad issues of policy and administration. <p>According to the NJC's guidelines on appointment of judicial officers, only suitable candidates of impeccable character, with sound legal background are recommended for appointment to judicial offices.³⁴</p>
<p>What are the criteria of eligibility for membership?</p>	<p>Many members are <i>ex officio</i> members. In detail, membership of the two bodies is defined in the Constitution as pointed out below.</p> <p>According to the Third Schedule, Section 20 of the Constitution, the composition of the National Judicial Council is as follows:</p> <ul style="list-style-type: none"> - the Chief Justice of Nigeria who shall be the Chairman - the next most senior Justice of the Supreme Court who shall be the Deputy Chairman; - the President of the Court of Appeal; - five retired Justices selected by the Chief Justice of Nigeria from the Supreme Court or Court of Appeal; - the Chief Judge of the Federal High Court; - five Chief Judges of States to be appointed by the Chief Justice of Nigeria from among the Chief Judges of the States and of the High Court of the Federal Capital Territory, Abuja in rotation to serve for two years; - one Grand Kadi to be appointed by the Chief Justice of Nigeria from among Grand Kadis of the Sharia Courts of Appeal to serve in rotation for two years; - one President of the Customary Court of Appeal to be appointed by the Chief Justice of Nigeria from among the Presidents of the Customary Courts of Appeal to serve in rotation for two years; - five members of the Nigerian Bar Association (NBA) who have been qualified to practice for a period of not less than fifteen years, at least one of whom shall be a Senior

³⁴Azinge and Rapu 2012, p.5

	<p>Advocate of Nigeria, appointed by the Chief Justice of Nigeria on the recommendation of the National Executive Committee of the Nigerian Bar Association to serve for two years and subject to re-appointment.</p> <p>Provided that the five members shall sit in the Council only for the purposes of considering the names of persons for appointment to the superior courts of record; and</p> <ul style="list-style-type: none"> - two persons not being legal practitioners, who in the opinion of the Chief Justice of Nigeria, are of unquestionable integrity. <p>The Composition of the Federal Judicial Service Commission was established in the Third Schedule, Part 1, Section 20, of the Constitution as follows:</p> <ul style="list-style-type: none"> - The Chief Justice of Nigeria, who shall also serve as the Chairman; - The President of the Court of Appeals; - The Attorney-General of the Federation; - The Chief Judge of the Federal High Court; - Two individuals who have been qualified to work as Legal Practitioners in Nigeria for a period of not less than fifteen years. <p>They will be chosen from a list of no less than four qualified candidates who have been recommended by the Nigerian Bar Association; and</p> <ul style="list-style-type: none"> - Two other persons who are not Legal Practitioners, but are of unquestionable integrity in the opinion of the President. <p>Section 156. (1) of the Constitution provides that a person is NOT qualified for appointment as a member of the bodies if he is not qualified or if he is disqualified for election as a member of the House of Representatives, or if within the preceding ten years, he has been removed as a member of any of the bodies or as the holder of any other office on the ground of misconduct.</p>
How is the Judicial Commission / Judicial Council composed?	See above.
Do ex-officio members have the same authorities like other members?	Yes they do.
Who selects members of the Judicial Commission / Judicial Council?	<p>Except for <i>ex officio</i> members and where other provisions are made in the Constitution, the members of the executive bodies established under Section 153 are appointed by the President with the appointment being subject to confirmation by the Senate(<i>C.F.R.N. Sec. 154 (1)</i>).</p> <p>Most of the members of the NJC are <i>ex officio</i> members, determined as the Constitution provides. (see composition). Certain members are appointed by the Chief Justice, these being (also see composition above):</p> <ul style="list-style-type: none"> - Five retired Justices, five chief judges of States, one Grand Kadi, one President of Customary Court of Appeal, five members of the NBA, two persons not being legal practitioners.

	<p>According to Prof. Ameze Goubadia it is important to note that in reality, there is an overwhelming power in the Chief Justice to determine the composition of the NJC. At least two thirds of the members are appointed directly or ultimately by the Chief Justice.</p> <p>In the case of the Federal Judicial Service Commission, except for the ex officio members (see above), the President appoints:</p> <ul style="list-style-type: none"> - Two individuals who have been qualified to work as Legal Practitioners in Nigeria for a period of not less than fifteen years. They will be chosen from a list of no less than four qualified candidates who have been recommended by the Nigerian Bar Association; and - Two other persons who are not Legal Practitioners, but are of unquestionable integrity in the opinion of the President.
<p>What kind of relation exists between the “highest court” and the Judicial Commission / Judicial Council?</p>	<p><u>National Judicial Council:</u> The NJC distributes the funds to the different courts (including, the Supreme Court). The Chief Justice and the next most senior justice of the Supreme Court are the Chairman and Deputy Chairman respectively of the NJC. Furthermore, five justices of the Supreme Court and the Court of Appeal are members of the NJC. The NJC recommends to the President the appointment of justices of the Supreme Court as well as their removal or the exercise of disciplinary control.</p> <p><u>Federal Judicial Service Commission:</u> Chief Justice is Chairman of the Commission. By virtue of C.F.R.N. Third Schedule, Section 13 (a), the Commission advises the NJC in nominating persons for office of the Chief Justice of Nigeria and a Justice of the Supreme Court.</p>

4. Challenges of Neutrality and Impartiality

VI. Composition

Composition of Constitutional Courts / Supreme Courts	
<p>Eligibility: (a) minimum age / (b) maximum age / (c) legal education / (d) special legal qualification (e.g. sitting judge; being an expert in one legal system (for example Sharia law)/ (e) years of professional experience / (f) limitations (no party membership, no other positions while sitting in the court) /(g) other requirements</p>	<ul style="list-style-type: none"> - The Person must be qualified to practice as a legal practitioner and must have been so for at least fifteen years (C.F.R.N. Sec. 231 (3)) - Section 291. (1) of the Constitution provides , that a Justice of the Supreme Court or the Court of Appeal may retire when he attains the age of sixty-five years and cease to hold office when he attains the age of seventy years For all other courts, judges may retire at the age of sixty, and cease to hold office at the age of sixty-five. - Section 288 (1) of the Constitution states that the President

	<p>must have regard to the need to ensure that there are among the justices of the Supreme Court and the Court of Appeal, persons learned in Islamic personal law and persons learned in Customary law.³⁵</p> <ul style="list-style-type: none"> - A person who is member of the NJC is not qualified to be appointed as a Justice of the Supreme Court, and remains disqualified until 3 years after he ceases to be a member (<i>C.F.R.N. Sec 289</i>). - Any Judicial officer who has ceased to be a judicial officer for any reason whatsoever cannot afterwards appear or act as a legal practitioner before any court of law or tribunal in Nigeria (<i>C.F.R.N. Sec 292 (2)</i>).
Selection of Constitutional Court / Supreme Court Judges: all judges selected in the same manner? /who / which institution is involved in the selection process?	Yes , all judges are selected in the same manner. According to Section 231. (1) and (2) of the Constitution, the appointment of a person to the office of Chief Justice or Justice of the Supreme Court is made by the President on the recommendation of the NJC subject to confirmation of such appointment by the Senate (see point V.3 above)
Selection of Constitutional Court / Supreme Court Judges: if selected in different processes: who / which institutions are involved in the respective processes?	----
How many institutions are involved in the selection process?	Four. The Federal Judicial Service Commission recommends to the NJC , which in turn recommends to the President . The President appoints the person subject to confirmation by the Senate . The appointed person must take the Oath of Allegiance and the Judicial Oath before assuming office. (<i>C.F.R.N. Sec 290 (1)</i>).
Sequence of the selection process (recommendation, advise; election, consultation; appointment; cooption)	See above.
What are the terms of office	Section 291. (1)of the Constitution holds that a Justice of the Supreme Court or the Court of Appeal may retire when he attains the age of sixty-five years and will cease to hold office when he attains the age of seventy years . In the case of all other courts, judges may retire at the age of sixty, and shall cease to hold office by the age of sixty-five.
Is a re-selection possible?	Any judicial officer who has ceased to be a judicial officer for any reason whatsoever cannot afterwards appear or act as a legal practitioner before any court of law or tribunal in Nigeria (<i>C.F.R.N. Sec 292 (2)</i>).
Is the representation of minorities guaranteed (are ethnic, linguistic, religious differences to be considered)? How?	There must be members who are learned in Islamic and Customary law, see above. In addition, there is a definite effort to ensure that membership of federal courts comprises all the six geopolitical zones in the country. By the same token, at state level, the local government areas in each state are also

³⁵For a person learned in Islamic or Customary Law to be appointed a justice at the Supreme Court, he/she must be qualified as a legal practitioner in Nigeria for at least 15 years and he/she must have obtained a recognized qualification in Islamic law from an institution acceptable to the NJC / must in the opinion of the NJC have considerable knowledge of and experience in the practice of Customary law (Sec 288. (2) a and b).

	represented.
Is the opposition involved in the selection process?	Yes, although not actively. The opposition is part of the Senate, which merely confirms the appointment of Justices by the President.

1. Eligibility for Appointment as a Constitutional Court Judge / Supreme Court Judge
2. Selection of Judges of the Constitutional or Supreme Court
3. Terms of Office
4. Representation of Minorities

VII. Competences

1. Preliminary Review

Short overview of the Legislative Process in Nigeria:

The legislative powers of a state or of the federation are vested in the National Assembly (NA) or the House of Assembly of the state. A bill can originate from any of the Houses, from the executive, Interest Groups/Associations, or the Judiciary. Every bill receives three readings previous to its passage (*Order XII Rule 3 (1) of the Standing Orders of the House of Representatives*). A bill must be passed in both Houses and sent to the President/Governor to assent. The President has 30 days to assent, make recommendations or withhold his assent. The NA may thereafter review the Bill if recommendations were made OR pass the law with a two-thirds majority of both Houses. An assent by the President in this case is not necessary.

Preliminary Review (reviewing the constitutionality of a bill before it becomes law)	
Available?	Yes. Section (8) of the Constitution provides the following: <i>“Save as otherwise provided by this Constitution, the exercise of legislative powers by the National Assembly or by a House of Assembly shall be subject to the jurisdiction of courts of law and of judicial tribunals established by law, and accordingly, the National Assembly or a House of Assembly shall not enact any law, that ousts or purports to oust the jurisdiction of a court of law or of a judicial tribunal established by law.”</i>
Who can trigger the procedure (or is it part of the legislative process) (who has standing)? What is required to take action?	Neither the Constitution (other than what is stated above), nor the Supreme Court Act, nor the Legislative Houses (Powers and Privileges) Act, nor the Senate or House of Representatives Standing Orders/Rules provide any provision as to the specification of preliminary review by any court. Wahab Egbewole, Professor University of Ibadan claims that both Houses of the National Assembly may refer the bill to the Supreme Court for review at any stage. A media article claims that: The President can request the Supreme Court to adjudicate cases within the legislative process. ³⁶
At which state of the legislative process can	See above.

³⁶According to ‘Nigeria: 2013 Appropriation Bill Faces Constitutional Crisis’ BY TONY AMOKEODO AND NSE ANTHONY-UKO, 13 FEBRUARY 2013; available at <http://allafrica.com/stories/201302130183.html>

the preliminary review be triggered?	
Applicable to all bills / drafts?	According to WahabEgbewole, yes.
Also consultative opinions available?	An Executive legislative proposal is first thought of by the Ministry, Department or Agency. It works out its political, administrative, financial, economic and social implications. The legal or constitutional aspects of the proposal including feasibility and desirability of the legislation are examined in consultation with the Ministry of justice. The Ministry of Justice, at this stage, advises generally on the necessity or desirability of such legislation in the light of existing laws and constitutional conformity or validity of the proposed legislation. ³⁷ who may within the legislation process recommend review/amendment to the Senate / House of Reps.

2. Abstract Review

Abstract Review	
Available?	No. The judiciary is guided by principles like ripeness. It will not give such abstract reviews.
Who can trigger the procedure (who has standing)? What is required to take action?	-
Applicable to all laws (or are there any restrictions: (organic laws?)?)	-
What kind of judgments may be rendered (nullification; directions to the legislature to fix the unconstitutional parts of a law within a specific period of time; others)?	-

3. Specific or Incidental Review

Incidental Review testing the constitutionality of a regulation / law as part of deciding the case at hand	
Available (are courts authorized to review the constitutionality of laws)?	Yes they are. See point IV. 2 above, and see for example A-G, <i>Ondo State v. A-G Federation & Ors</i> where the Supreme Court declared null and void sections 26(3) and 35 of the Corrupt Practices and Other Related Offences Act 2000 for being unconstitutional.
What happens if the court is of the view that a law relevant to the case at hand is unconstitutional? Can the court not apply that law or declare it unconstitutional?	Yes. It can declare it inoperative or unconstitutional. <u>Example:</u> In <i>A-G Abia State & 35 Ors v. A-G Federation</i> , the Supreme Court reviewed the Electoral Act passed by the National Assembly on its constitutionality. Justice Idris Legbo Kutigi J.S.C. held that: <i>“Where the provision in the Act is within the powers of the National Assembly but the Constitution is found to have already made the same or similar provisions, then the new provision will be regarded as invalid for duplication and or inconsistency and therefore inoperative. The same fate will befall any provision of the Act which seeks to enlarge, curtail or alter any existing</i>

³⁷ Stated in New Legislators' Handbook on Legislative Process 2012

	<i>provision of the Constitution. The provision of provisions will be treated as unconstitutional and therefore null and void.</i>
Is the doctrine of “stare decisis” legally applied (precedent)?	Yes. See point II. 1 above.
Are there restrictions to incidental review (testing the constitutionality of a regulation / law as part of deciding the case at hand)?	Yes, Ouster Clauses. See point 5 of this section below.

4. Direct Action before the Constitutional or Supreme Court (individual complaint)

Direct action	
Available?	<p>No. There is no individual complaint available at the Supreme Court.</p> <p>The Supreme Court has no original jurisdiction on any matter except a dispute between States or between a State and the Federal Government (C.F.R.N. Sec 232 (1)).³⁸</p> <p>Individual complaints may be brought to the Federal High Court or State High Court.</p>
Who can trigger the procedure (who has standing)?	<p>Complaints to the Supreme Court must be brought in the name of the Attorney General of the Federation or the Attorney General of a State (<i>Supreme Court Act Sec 20 (a) and (b)</i>).</p> <p>See e.g. <i>A-G Lagos v. A-G Federation</i> or <i>Abia v. A-G Federation</i></p> <p>Individual Complaints to the High Court may be brought.</p>
What is required to take action (how)?	<p>At the Federal High Court, Civil proceedings may be begun by writ, originating summons, originating motion or petition. Any individual, group or company may present a petition to the Court Registry (<i>Federal High Court (Civil Procedure) Rules Order 5</i>).</p> <p>The following formal requirements must be met(<i>Order 5 Sec 2</i>):</p> <ul style="list-style-type: none"> - The petition must include a concise statement of the nature of the claim made or relief or remedy required in the proceedings begun thereby. - The petition must include at the end thereof a statement of the names of the persons, if any, required to be served therewith or, if no person is required to be served a statement to that effect - Where a person brings a petition in person, the petition must be endorsed with the occupation of the person and his contact details.
Are there restrictions to the right of individual complaint?	Yes. Individuals do not only need standing, they also need a reasonable cause of action.

5. Limits on the Review of Constitutionality

³⁸E.g. *Abia and Ors v. Attorney-General of the Federation* (2006) where the Supreme Court of Nigeria discussed the relationship between the legislative powers of the national government vis-à-vis those of the state governments

Limits of Review	
Are there explicit limitations to the review of the constitutionality (for example international treaties, laws approved by referendum, laws that were valid before the constitution came into force, legislation past under emergency power, limitation to manifestly unconstitutional acts)?	<p>Yes there are limits to judicial review. The Constitution of Nigeria provides several Ouster Clauses.</p> <p>1. Exclusion of Fundamental Objectives & Principles set out in Chapter II</p> <p>Sec 6 (c) states that Judicial Powers do not extend to any issue or question as to whether any act of omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II.</p> <p>2. Competence to make law before the 1999 Constitution³⁹</p> <p>Sec 6(6)(d) stipulates that, judicial powers “shall not, as from the date when this section comes into force, extend to any action or proceedings relating to any existing law made on or after 15th January, 1966 for determining any issue or question as to the competence of any authority or person to make any such law.</p> <p>3. Impeachment of President and Governors</p> <p>There is an ouster of jurisdiction with regard to the impeachment of the President or a State Governor from office. (for more detail, see impeachment of President in Point VII 11 below):</p> <p><i>“No proceedings or determination of the Panel or of the National Assembly or any matter relating thereto shall be entertained or questioned in any court (Sec 143 (10)).” See also</i></p> <p>Section 188 of the 1999 Constitution generally provides for an ouster clause in the matter of impeachment of a Governor. Sub section 10 thereof provides:</p> <p><i>“No proceedings or determination of the panel or of the House of Assembly or any matter relating to such proceedings or determination shall be entertained or questioned in any court.”</i></p> <p>The Section ousts the jurisdiction of the court to question such <u>valid</u> removal from office.⁴⁰</p>

6. Review of Constitutional Amendments (formal regularity and substance)

Review of Constitutional amendments	
Is it possible to review amendments to the constitution itself?	Yes , amendments are made by Acts of the National Assembly in accordance with the strict procedure set out in the Constitution. They are subject to judicial review.
If so, is the review limited to a formal review of the process followed for amendment? or	Both are permitted because the law recognizes that a law may be both procedurally and in substance unconstitutional.

³⁹For more detail see: THE CONSTITUTIONAL VESTING OF JUDICIAL POWERS IN THE JUDICATURE IN NIGERIA – THE PROBLEM WITH SECTION 6(6)(D) OF THE CONSTITUTION OF 1999 By C. A. Obiozor, Ph.D in NIALS Law and Development Journal 2010av at <http://nials-nigeria.org/pub/C.A.pdf>

⁴⁰However, in *Lodaja*, Per Tobi, J of the Supreme Court held: “Section 188 cannot be invoked merely because the House does not like the face or look of the Governor”. Also in *Katsina* case, Per Akintan, JSC furthermore states that: “The attitude of the Courts to such provisions is that they are regarded with extreme caution since they are regarded as unwarranted affront and unnecessary challenge to the jurisdiction of the courts which the courts guard jealously.” Cited in: <http://www.unilorin.edu.ng/publications/adekilekunmt/INAKOJU.pdf>

is a review on the substance of the constitution also permitted?	(according to WahabEgbewole).
Does the constitution contain immutable clauses (provision that are excluded from constitutional amendment)?	There are entrenched provisions which the Constitution declares shall be inviolable . The provisions of those enactments shall not be altered except in the manner in which the Constitution itself may be amended. See section 315 of the Constitution.
Who can trigger the procedure (who has standing)? What is required to take action?	This will be done like any amendment of the Constitution following the procedure set out in section 9. The power is vested in the National Assembly.

7. Unconstitutional Omission

Unconstitutional Omission	
Is it possible to take action against constitutional obligations that haven't been implemented?	Yes. Except Chapter two of the Constitution which deals with Fundamental Objectives and Directive Principles of State Policy. Section 6 (2) of the Constitution states that the judicial powers shall not except as otherwise provided by this Constitution, extend to any issue or question as to whether any act of omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution;
Who can trigger the procedure (who has standing)? What is required to take action?	All citizens have standing.
What kind of judgments may be rendered (instruction to the legislature / executive to take action (within a specific period of time); declaration that a law only insufficiently implements a constitutional obligation; court "implements" the obligation by rendering a specific right to the claimant; others)?	All judgements are possible (according to WahabEgbewole). Damages may be ordered to be paid as is stated in Section 47 of The Federal High Court Act (see above).

8. Conflicts between State Bodies

Conflicts between State Bodies	
Available (does the court have jurisdiction to decide whether or not a certain task falls within the authority of a state body or to interpret the limits of authority also in relation to other bodies, be it horizontally (between different institutions at the national level) or vertically (between national institutions and institutions from the province / local institutions)?	Yes it is available. The Federal High Court has jurisdiction over cases that relate to the administration or the management and control of the Federal Government or its agencies (<i>C.F.R.N. Sec 251 (1) (p)</i>). Appeals are heard by the Court of Appeal and in turn, the Supreme Court. Yes the Courts may determine whether a certain task falls within the authority of a state body on both horizontal and vertical levels. <u>For example:</u> <ul style="list-style-type: none"> - in <i>A-G Abia State & 35 Ors v A-G Federation</i> the Supreme Court determined the competences of the legislative powers of the National Assembly as opposed to the ones of a State House of Assembly. - <i>In Independent National Electoral Commission (INEC) and Another v Musa (on behalf of Peoples Redemption Party)</i>

	<i>and Others</i> (2003) AHRLR 192 (NgSC 2003), the Supreme Court determined the responsibilities of INEC. ⁴¹
Who can trigger the procedure (who has standing)? What is required to take action (how)?	All state bodies have standing and may file a claim.

9. Elections

Elections	
Is the Court involved in resolving electoral disputes (especially with regard to the validity of election is valid)?	The Supreme Court does not have original jurisdiction in election matters. It however has appellate jurisdiction in the Presidential and Governorship election disputes.
Who can trigger the procedure (who has standing)? What is required to take action?	Section 137(1) of the Electoral Act 2010 provides that an election petition may be presented by one or more of the following persons (a) a candidate in an election ; (b) a political party which participated in the election
If the court is not empowered, is there another institution that settles electoral disputes?	<p>The Supreme Court does not have original jurisdiction over election matters but only appellate jurisdiction in presidential or governorship election petitions. (C.F.R.N. Sec 233 (2) (i)). Appeals lie from the Court of Appeal which has original jurisdiction to hear a case made by petition with regard to Presidential or Governorship elections (C.F.R.N. Sec 239 (1) and Sec 133 Electoral Act 2010).</p> <p>The Constitution as amended provides in Sec 285. (1) for the establishment in each State of the Federation and the Federal Capital Territory one or more election tribunals to be known as the National and State Houses of Assembly Election Tribunals which “shall, to the exclusion of any Court or Tribunal, have original jurisdiction to hear and determine petitions as to whether— (a) any person has been validly elected as a member of the National Assembly; and (b) any person has been validly elected as member of the House of Assembly of a State”</p> <p>Furthermore, in respect of area council elections, the Electoral Act establishes the Area Council Election Tribunal to determine cases relating to the election of the Chairman, Vice-Chairman or Councillor (Sec 135 Electoral Act 2010).</p> <p>By section 246 (3) of the Constitution, the Court of Appeal is the final adjudicator in appeals emanating from Election Tribunals.</p>

10. Fundamental Rights

Fundamental Rights (see also individual complaint)	
Are (all?) alleged human rights abuses	Yes all human rights abuses are subject to review before a court.

⁴¹Judgement available at: <http://www1.chr.up.ac.za/index.php/browse-by-subject/413-nigeria-independent-national-electoral-commission-and-another-v-musa-and-others-2003-ahrlr-192-ngsc-2003.html>

subject to review before a court?	<p>These are the civil rights and obligations set out in Chapter IV of the Constitution. Breaches of the fundamental Objectives and Directive Principles set out in Chapter II are not subject to similar review. There remains a division in the literature as to whether these can be equated with the civil rights guaranteed in Chapter IV.Y</p> <p>Section 42(1) of the Constitution provides that any person who alleges that any of the provisions of Chapter IV (fundamental rights) has been is being or is likely to be contravened in any State in relation to him may apply to a High Court in that State.</p>
Is there any other kind of institution where aggrieved individuals may turn to (human rights commission, Ombudsperson)? How is its institutional relation to the (highest) courts?	There is the National Human Rights Commission (serving as an extra-judicial mechanism for the enhancement of the enjoyment of human rights) as well as Public Complaints Commission which is the Ombudsman They do not have any relationship with the Supreme Court.
Who can trigger the procedure (who has standing: also NGOs / consumer protection organizations on behalf of individuals)? What is required to take action (how)?	<p>Sub-section (1) of section 42 states that “any person” can file a claim. However, it is a general (but not unchallenged) opinion that an aggrieved person’s rights need to be infringed or threatened to entitle him /her to go to court. This is the requirement of Standing that gives a potential litigant the right to his day in court on establishing sufficient interest in the outcome of the litigation. r (for more details see point on “standing” below). Accordingly, NGOs generally lack <i>locus standi</i>.</p> <p>HURILAWS, an NGO in Nigeria challenged the constitutionality of some acts of the government.⁴² But the cases were lost on grounds of lack of locus standi as it could not be established that the NGO’s civil rights and obligations have been affected. (For more detail see point on locus standi below).</p>
With regard to social rights, does the highest court in the country have jurisdiction to offer less than attributed by lower courts (<i>reformation in peius</i>) (example: right to water in the constitution, but how many litres/day as a minimum threshold: If lower court admits 30 l/d, but the complainant wants 40 l/d and appeals can the highest court also overturn the lower court to the negative, only offering 25 l)?	<p>Note that the social rights ar fall under Chapter II of the Constitution. They are non-justiceable.</p> <p><u>Addition:</u> It is worth noting that the National Assembly shall make provisions to render financial assistance to any indigent citizen, to enable him/her engage the services of a legal practitioner to prosecute his claims under Chapter IV. r (<i>C.F.R.N. Sec 46 (4) (i) and (ii)</i>).</p>

11. Other Powers of Supreme Courts / Constitutional Courts

Other powers	
Conduct of referenda	<p>No, the Supreme Court is not responsible for the conduct of referenda.</p> <p>Referenda are only provided for by the constitution in relation to the creation of new states or local government areas. (see</p>

⁴²*Hurilaw v ZamfaraZMS/GS/17/2000, or Hurilaws v Nigerian Communications Commission &OrsFHC/L/CS/39/2000*. Both cases were cited in Illofulunwa

	<i>C.F.R.N. Sec 8)</i>
constitutionality and dissolution of political parties	<p>The Constitution does not include any provisions as to the constitutionality or dissolution of a political party but only persons belonging to a political party.</p> <p><i>Sec 228 (a) and (b)</i> holds that The National Assembly may by law provide for the punishment of any person involved in the management or control of any political party found after due inquiry to have contravened any of the provisions of sections 221, 225(3) and 227 of this Constitution; or for the disqualification of any persons from holding public office on the ground that he knowingly aids or abets a political party in contravening section 225(3) of this Constitution;</p> <p>The Independent National Electoral commission is responsible for the examination of administration procedures of political parties.</p>
impeachment procedures for the president	<p>The Supreme Court is not per se responsible for impeachment procedures of the President. However on the request of the President of the Senate, the Chief Justice selects a panel to investigate allegations of misconduct, which could lead to the impeachment of the president. (<i>see C.F.R.N. Sec 143</i>)</p> <p><u>EXPLANATION:</u></p> <p>By virtue of Section 143 of the Constitution, a notice of any allegation of gross misconduct⁴³ of the President must be signed by not less than one third of the NA and presented to the President of the Senate. Within fourteen days each House resolves by motion whether an investigation is necessary or not. If so, then</p> <p><i>“Within seven days of the passing of a motion under the foregoing provisions, the Chief Justice of Nigeria shall at the request of the President of the Senate appoint a Panel of seven persons who in his opinion are of unquestionable integrity, not being members of any public service, legislative house or political party, to investigate the allegation as provide in this section.”</i> (<i>Sec 143 (5)</i>).</p> <p>If the panel reports that the allegations have not been proved, no further action is taken.</p> <p>If the panel reports, that the allegations have been proved, and each House of Assembly adopts the report with not less than two thirds of its members, the President must stand removed of his</p>

⁴³“gross misconduct” is defined in the Constitution as follows: a grave violation or breach of the provisions the Constitution or a misconduct of such nature as amounts in the opinion of the National Assembly to gross misconduct. (*Sec 143 (11)*)

	<p>office.</p> <p><u>Ouster Clause of the Section:</u></p> <p><i>“No proceedings or determination of the Panel or of the National Assembly or any matter relating thereto shall be entertained or questioned in any court (Sec 143 (10)).”</i></p> <p>Similar impeachment procedures exist on State level. See Sec 188 Impeachment procedures for Governor see above / ouster clause</p>
(binding) interpretation of the constitution	<p>Yes.Section 1 Subsection 1 of the Constitution provides that <i>“this Constitution is supreme and its provisions shall have binding force on the authorities and persons throughout the Federal Republic of Nigeria. It provides further in section 1(3) that “If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall to the extent of the inconsistency be void.” As the final Court of appeal, it is the Supreme Court that thus interpretes the Constitution with finality.</i></p> <p>The Court of Appeal and the High Courts of Nigeria interpret the Constitution see above.</p>
Others?	

VIII. Standing

1. Who (see under VII.)

Table Structure

2. How (see under VII.)

Standing Generally:

Section 36 (1) of the Constitution provides that in the determination of his civil rights and obligations, including any question or determination by or against any government or authority, **a person shall be entitled to a fair hearing** within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.

Generally, ‘any person’ has standing to make a claim in relation to any harm that was done to him (see provision above). In detail, there have been different opinions on *locus standi* amongst the Nigerian Judges. For a long time, standing was derived from provision 6(6)(b) of the Constitution.

The Judgement delivered by **Obaseki. J.S.C.** in *Timothy Adeilo Adefulu & 12 Ors v Bello Oyesile & 3 Orsholds*, while referring to Section of the Constitution which reads:

- (6) The judicial powers vested in accordance with the foregoing provisions of this section
- (b) shall extend to all matters between government or authority and any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question **as to the civil rights and obligations of that person**

“What are the civil rights and obligations of the Respondents that have been allegedly violated by the appellants? and have to be determined? If there are, the Respondents have locus standi. If there is none, they have no locus standi.”

This position is not left unchallenged as Ayoola JCA in F.A.T.B.V. EZEGBU (1994) 9 NWLR 149, 236 stated thus: *“I do not think section 6(6)(b) of the Constitution is relevant to the question of locus standi. If it is, we could as well remove any mention of locus standi from our law book. Section 6(6)(b) deals with judicial powers and not with individual rights. Locus standi deals with the rights of a party to sue. It must be noted that standing to sue is relative to a cause of action.”*

Section 6(6)(b) of the Constitution is primarily and basically designed to describe the nature and extent of judicial powers vested in the courts. It is not intended to be a catch-all, all-purpose provision to be pressed into service for determination questions ranging from locus standi to the most uncontroversial questions of jurisdiction.”

This opinion was adopted in: OWODUNMI V. REGISTERED TRUSTEES OF CELESTIAL CHURCH & ORS. (2000) 10 NWLR (Pt. 675)

Locus standi is also often claimed to be established when a person has sufficient interest in the matter concerned.

In *Hon. Muyiwa Inakoju v Hon. Abraham Adeolu Adeleke* Niki Tobi, J.S.C stated:

“It is the law that to have locus standi to sue, the plaintiff must show sufficient interest in the suit. One criterion of sufficient interest is whether the party could have been joined as a party to the suit. Another criterion is whether the party seeking the redress or remedy will suffer some injury or hardship from-the litigation [...] The interest must be substantial, tangible and not vague, intangible or caricature”

64. (1) Federal High Court Act: a "party" includes every person served with notice of, or attending, any proceeding who, although not named on the record of the proceeding, has the **like interest** in the subject-matter of the proceeding as a person named on the record of the proceedings;

Similar: Section 233 (5), Supreme Court admits anyone with “interest in the matter”.

What constitutes sufficient, or special interest or whether an interest is worthy of protection is however a **matter of judicial discretion**⁴⁴

Other Cases: *Sehidemi v Governor of Lagos state*⁴⁵

The Fundamental Rights Enforcement Procedure Rules (2009), made clearer the principle of locus standi in Nigerian Law:

(e) The Court shall encourage and welcome public interest litigations in the human rights field and no human rights case may be dismissed or struck out for want of locus standi. In particular, human rights activists, advocates, or groups as well as any non-governmental organisations, may institute human rights application on behalf of any potential applicant. In human rights litigation, the applicant may include any of the following:

- (i) Anyone acting in his own interest;
- (ii) Anyone acting on behalf of another person;
- (iii) Anyone acting as a member of, or in the interest of a group or class of persons;
- (iv) Anyone acting in the public interest, and

⁴⁴ *Adesanya v. President of Nigeria* (1981) 2 NLLR p.358, as cited in Oyelami 2010

⁴⁵ Often referred to but judgment not available.

(v) Association acting in the interest of its members or other individuals

or groups

(f) The Court shall in a manner calculated to advance Nigerian democracy, good governance, human rights and culture, pursue the speedy and efficient enforcement and realisation of human rights.

Table Structure

IX. Form and Effects of Judgments (Authority of the Judgments) of the highest court

Authority of Judgments	
Is a judgment written together or rather exists of various parts, individually by each judge?	Each Judge is expected to write his/her own judgment with one of them delivering the lead judgment See 294 (2) Constitution of Nigeria: <i>“Each Justice of the Supreme Court or of the Court of Appeal shall express and deliver his opinion in writing, or may state in writing that he adopts the opinion of any other Justice who delivers a written opinion”</i>
If judgments are written together, is it possible to identify single judges (in general or through dissenting/concurrent opinions)?	It is possible to identify single judges as each judge is listed separately in the judgments. See 294 (2) Constitution , cited above or case as example.
Do the judgments have <i>erga omnes</i> or <i>inter partes</i> effects (with regard to VIII. 2-4; 7-8)?	Judgements have erga omnes effects (underlying the principles of <i>ratio decidendi</i> and <i>obiter dictum</i>).
Do the judgments have effects for the future only (<i>ex-nunc</i>), do they have even retroactive effects (<i>ex-tunc</i>) or is the effect deferred in order to give the legislation time to adjust the legislation to the court’s decision.	Still to be enquired.
What legal authority does the judgment have to the relevant groups (below) considering that they have been part of the process?	Supreme Court Act Section 8 (1) and (2) provides that the processes of the Supreme Court runs throughout the Federation. <i>“Any judgment of the Supreme Court shall have full force and effect in the Federation and shall be enforceable by all courts and authorities in any part of the Federation in like manner as if it were a judgment of the High Court of that part of the Federation.” (C.F.R.N. Sec 8 (2))</i>
In general, who (see below) is affected how by the judgments of the Constitutional Court?	All individuals and institutions are bound by the orders of the Supreme Court.

1. On Citizens
2. On Administrations
3. On other Judicial Institutions
4. On Political Institutions
5. On Military

X. Control of the Constitutional Jurisdictions

Control of the Constitutional Jurisdiction

Political control (see selection of judges; terms of office)	The Attorney General of the Federation is a member of the Federal Judicial Service Commission which prepares the list of candidates to choose from for the National Judicial Council and in the last instance for the President. The political control hereby can be regarded as minimal , as the Attorney General has the same rights as other members of the Commission.
Removal / dismissal of highest judges (at all / only by judicial decision within the judiciary / by external institutions?)	<p>The Federal National Judicial Service Commission also recommends to the National Judicial Council, the removal from office of judicial officers.</p> <p>The Judicial Council in turn, recommends to the President the removal from office of judicial officers.</p> <p>Section 292 (1) of the Constitution provides that judicial officers of courts of law established by the constitution for the federation can be removed by the President, acting on an address supported by two-thirds majority of the Senate.</p> <p>The Chief Judge of a State, Grand Kadi of a Sharia Court of Appeal or President of a Customary Court of Appeal of a State, can be removed by the Governor acting on an address supported by two-thirds majority of the House of Assembly of the State.</p>
What are the criteria for the removal of highest judges (e.g. proven legal misbehavior)	A judicial officer may be removed for his inability to discharge the functions of his office or appointment (whether arising from infirmity of mind or of body) or for misconduct or contravention of the Code of Conduct (C.F.R:N. Sec 292 (2)).
May decisions of the highest court be overruled by another institution (legislature)? What are the requirements?	<p>No, they may not be “overruled”.</p> <p>However, the legislative powers of the National Assembly give the possibility to alter/change enactments (including the Constitution) which may result in rendering certain past judgements of the Supreme Court as inapplicable (due to the change of legislation).</p>
Amending the constitution in light of a decision of the highest court.	Allowed and possible.

1. Independence vs. Accountability
2. Political Control
3. Constitutional Amendment
4. Removal / Impeachment of Judges
5. Overruling of Decisions

XI. Conclusion

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